

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH ALLEN NEIGHBORS,

Plaintiff, No. CIV S-05-0011 GEB KJM P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants. ORDER

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Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee in effect at the time of filing of this action, \$150.00. 28 U.S.C. § 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected and forwarded by the appropriate agency to the Clerk of the Court

1 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28  
2 U.S.C. § 1915(b)(2).

3 Plaintiff's complaint states a cognizable claim for relief under 42 U.S.C. § 1983  
4 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a  
5 reasonable opportunity to prevail on the merits his Eighth Amendment claims against defendants  
6 W.G. Douglas and D.B. Williams. Therefore, the court will order service of process upon those  
7 defendants. With respect to the other defendants named in plaintiff's complaint and the other  
8 claims asserted, plaintiff's complaint fails to state a claim upon which relief can be granted.<sup>1</sup>

9 Plaintiff has filed a motion asking that this case be certified as a class action.  
10 Plaintiff is a non-lawyer proceeding without counsel. It is well established that a layperson  
11 cannot ordinarily represent the interests of a class. See McShane v. United States, 366 F.2d 286  
12 (9th Cir. 1966). This rule becomes almost absolute when, as here, the putative class  
13 representative is incarcerated and proceeding pro se. Oxendine v. Williams, 509 F.2d 1405,  
14 1407 (4th Cir. 1975). Plaintiff's application for class certification will be denied.

15 In accordance with the above, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's request for leave to proceed in forma pauperis is granted.  
17 2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.

18 The fee shall be collected and paid in accordance with this court's order to the Director of the  
19 California Department of Corrections filed concurrently herewith.

20 3. Service is appropriate for the following defendants: W.G. Douglas and D.B.  
21 Williams.

22 4. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons,  
23 an instruction sheet and a copy of the complaint filed January 3, 2005.

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24 <sup>1</sup> Plaintiff asserts claims arising under California law. However, plaintiff fails to allege  
25 compliance with California's Tort Claims Act. See Cal. Gov't Code § 910; Mangold v. Cal. Pub.  
26 Utils. Comm'n, 67 F.3d. 1470, 1477 (9th Cir. 1995). Therefore, plaintiff cannot proceed on  
these claims.

1           5. Within thirty days from the date of this order, plaintiff shall complete the  
2 attached Notice of Submission of Documents and submit the following documents to the court:

- 3           a. The completed Notice of Submission of Documents;  
4           b. One completed summons;  
5           c. One completed USM-285 form for each defendant listed in number 3  
6 above; and  
7           d. Three copies of the endorsed complaint filed January 3, 2005.

8           6. Plaintiff need not attempt service on defendants and need not request waiver of  
9 service. Upon receipt of the above-described documents, the court will direct the United States  
10 Marshal to serve the above-named defendants as provided by Federal Rule of Civil Procedure 4  
11 without payment of costs.

12           7. Plaintiff's June 23, 2005 application for class certification is denied.

13 DATED: December 5, 2005.

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15             
16           UNITED STATES MAGISTRATE JUDGE  
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KENNETH ALLEN NEIGHBORS,

Plaintiff,

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NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

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Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_ :

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_  
Complaint

DATED:

Plaintiff \_\_\_\_\_